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SUBJECT: Taiwan Telecom: Cable Appeals Stuck in EY

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Summary

1. (SBU) Since fall 2008, Taiwan's National Communications Commission (NCC) has added financial conditions to license renewals by foreign-owned cable companies. The Carlyle Group-owned Kbro Company has appealed the NCC's licensing decisions to the Executive Yuan (EY) Appeals Committee, but the NCC has refused to cooperate with the Appeals Committee, and the Committee has failed to hand down its ruling within the legally-mandated five-month period. Minister Kao Su-po, who oversees the Appeals Committee, is reluctant to direct the Committee to make a decision, and suggested AIT ask the Premier or Vice Premier to force a decision. End summary.

Background

2. (U) About 80 percent of households in Taiwan have cable TV, giving the island one of the highest cable-TV penetration rates in the world. Taiwan's three major cable TV multi-system operators (MSOs), Kbro, China Network Systems (CNS), and Taiwan Broadband Communications (TBC), are owned by the Carlyle Group, Korea's MBK investment group, and Australia's Macquarie, respectively. These three companies provide 66 percent of cable TV service in Taiwan.

3. (SBU) Since the creation of the NCC in 2006, representatives of these three cable companies have complained to AIT that the Commission has opaque, inconsistent, and at times anti-competitive policymaking. Since the latest group of Commissioners took office in August 2008, industry has grown increasingly concerned that the Commissioners mistrust foreign investment in the Taiwan cable market, and subject Kbro, CNS, and TBC to a higher level of regulatory scrutiny.

4. (SBU) In September 2008, when licenses were up for renewal for Kbro's Yangmingshan Cable TV and CNS's Jia-he Cable TV, the NCC deferred renewing these licenses, cited concerns about these local entities' loan guaranty endorsements for their parent companies. According to the NCC, Yangmingshan and Jia-he each have insufficient registered capital to cover the loan-guaranty endorsements the two companies have made to their respective parent companies.

5. (SBU) After a week of internal deliberation, the NCC Commissioners re-convened and unanimously approved the nine-year license applications of both Jia-he and Yangmingshan, but added two conditions:

--Within six months, each company must arrange for a local bank to issue a "performance bond" guaranteeing re-payment to pre-paid customers if the company goes out of business.

--Within three months, each company must provide a plan for reducing

by 20 percent within two years the loan guarantees made by local partners on behalf of their foreign parent companies.

¶16. (SBU) Kbro appealed the NCC's decision, since it believed that the law does not allow the Commission to change conditions after a license is issued. According to Taiwan's Cable TV Act, the NCC has the authority to do one of three things with a license application:

--deny the license.

--issue a temporary, one-year license with conditions to fulfill to convert it into a normal nine-year license.

--issue a standard, nine-year license without conditions.

Nowhere in the law is there any discussion of "conditional" licenses.

¶17. (SBU) Despite the uncertain legal ground for conditional licenses, since fall 2008, the NCC has issued eight more conditional licenses to foreign-owned cable providers, requiring the companies to take the additional, burdensome step of issuing performance bonds, and demanding the companies restructure the local units' financial leveraging. The NCC recently confirmed to AIT that the Commission has not added such requirements to license renewals made by locally-owned cable companies.

#### Kbro Appeals NCC Decisions

¶18. (SBU) On October 24, 2008, Kbro made administrative appeals to  
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the EY Appeals Committee on the issue of the legality of the NCC's granting of conditional licenses, requesting that the EY overturn the NCC's decision to grant such licenses. The EY accepted the appeals for review, and also asked Taiwan's Supreme Administrative Court (SAC) to clarify the EY's role vis-a-vis the NCC. In December 2008, the SAC confirmed that NCC decisions are subject to the review of EY.

¶19. (SBU) Despite this ruling, the NCC continues to assert that first-instance appeals of NCC decisions must go through the Commission itself, and has refused to answer the EY's request for information on its decision to grant conditional licenses to Kbro-owned local cable providers.

#### EY Appeals Committee Refuses to Make a Decision

¶110. (SBU) According to Article 85 of the Administrative Appeal Act, the EY Appeals Committee, supervised by Minister-without-Portfolio Kao Su-po, must hand down a decision on an appeal within five months of accepting the appeal. According to Kao's Senior Executive Assistant, Ning Yeh, the Appeals Committee has discussed the Kbro appeal at several of its weekly meetings. The Committee, however, has not acted on the Kbro appeal for over five months, and has not indicated to Kbro when the Committee will make a decision.

¶111. (SBU) On April 15, AIT Deputy Director Robert Wang met with Minister Kao, who acknowledged the Appeals Committee has had the case for over the five-month limit set by the Administrative Appeal Act, and said the Committee will make a decision "at some point in the future." Kao, however, said the Committee is reluctant to hand down a decision without input from the NCC. He also said, since the NCC was created by the KMT and has a majority of KMT-nominated commissioners, the EY is in an "awkward" situation politically, and does not want to push the Committee to act.

¶112. (SBU) Kao requested AIT's "support" to overcome this political impasse by asking either Premier Liu Chao-shiuan or Vice Premier CHIU Cheng-hsiung to demand a decision from the Appeals Committee. Kao also recommended if Kbro does not want to wait for a decision, the company is welcome to take its case to the Taipei High Administrative Court, which handles the next level of administrative

appeals after the EY.

Comment

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¶13. (SBU) Regardless of whether or not it is within the NCC's authority to add conditions license renewals or the merits of the arguments of the case, it is troubling that the appeals process appears to have broken down. We plan to bring the matter up with the Premier or Vice Premier at the earliest opportunity. We will also continue to engage with NCC Commissioners over industry's concerns over the Commission's treatment of foreign-owned cable operators. End comment.

YOUNG